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# In the Supreme Court of the United States

NO. 72-111

JEFFREY PHILLIP BLOOM, BARRY JAY KANTOR and BRUCE ANDREW ROBIN,

*Petitioners,*

*vs.*

THE STATE OF FLORIDA,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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MIAMI REVIEW — 371-4853 — 377-3721

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Petitioner prays that a Writ of Certiorari be issued to review the judgment of the District Court of Appeal of Florida, Third District, entered in the above styled case on April 18, 1972.

## CITATIONS TO OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at ____ So.2d ____ and is printed at Appendix "A". The opinion of the Supreme Court of Florida denying the Petition for Writ of Certiorari is reported at ____ So.2d ____ and is printed at Appendix "B".

## JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District, was entered on April 18, 1972. The Florida Supreme Court denied Certiorari on June 9, 1972. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

## QUESTION PRESENTED

Is it a violation of a criminal Defendants rights to accept a guilty plea without full and adequate inquiry as to the voluntariness of the pleas?

## STATEMENT OF THE FACTS

The case against the Defendant Bloom, 71-4857, was called first. After a Motion to Suppress was denied by the Court (R. 20) the case proceeded to trial. After the State rested the defense moved for a directed verdict of acquittal. (R. 50) This was denied. The defense then announced it would not put on testimony but would renew its motions. These were denied. Counsel then withdrew the prior pleas and tendered a plea of nolo. (R. 51)

The court questioned the Defendant as to his understanding of what was occurring. The Defendant indicated he knew he was not challenging the truth of what he had been charged with. He further indicated he knew the maximum sentence which might be imposed.

Case number 71-5832 was called next. All defendants entered pleas to the charges. (R. 54) The State abandoned count two as it related to Kantor and Bloom. (R. 55)

Bloom indicated he knew he was pleading to possession. Further he indicated he knew the maximum sentence the Court could impose. (R. 56) The Defendant stated that he understood he was waiving his right to trial. (R. 56)

Kantor indicated the same things (R. 57) Robin indicated that he had heard what was told to the other Defendants. (R. 58) He realized he could be sent to the "State Prison". (R. 59)

## REASONS FOR GRANTING THE WRIT

In the case at bar, the trial judge erred in failing to explain the consequences of a plea of guilty to the Defendants resulting in a plea made from either ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats.

It is a fundamental principle that when a Defendant relinquishes a vested right, he should clearly understand the ramifications of the act before being allowed to do so. It is the inherent function of the trial judge to inform

the Defendant of the consequences of a waiver of any rights guaranteed by the Constitution of the United States.

In **Cainley v. Cochan,** 369 U.S. 511, 82 S.Ct. 884 (1962) the Defendant was not afforded the assistance of counsel at hi trial.

The question presented to the Appellate Court was whether the Defendant intelligently and understandingly waived the assistance of counsel, the trial record did not show that the Judge offered and the Defendant declined counsel. Nevertheless, the State Supreme Court imputed to Defendant the waiver of the benefit of counsel on a ground stated in the Court's opinion as follows: "If the record shows that Defendant did not have counsel . . ., it will be presumed that Defendant waived the benefit of counsel . . ."

The Supreme Court of the United States overturned the conviction stating:

> "Where an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record."

Continuing on, the Court specifically mandated that:

> "Presuming waiver from a silent record is impermissible, the record must show or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not a waiver."

The Supreme Court in **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709 (1969) agreed that the same standards must be applied to determine whether a guilty plea was voluntarily made. A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment. **Kercheval v. United States**, 274 U.S. 220, 47 S.Ct. 582 (1927). Since this plea is of upmost importance, the courts must watch carefully that the plea is not made through ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats, all of which might be a cover up of unconstitutionality. **Boykin**, supra.

> "What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in convassing the matter with the accused to make sure he has a full understanding of what the plea cannotes and of its consequences." **Boykin**, supra at 244.

Several fundamental constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Eighth Amendment and applicable to the States by reason of the Fourteenth Amendment. **Malloy v. Hogan**, 378 U.S. 1, 84 S.Ct. 1489 (1964). Second, is the right to trial by jury. **Duncan v. Louisiana**, 391 U.S. 145, 88 S.Ct. 1444 (1968). Third, is the right to confront one's accusers. **Pointer v. Texas**, 380 U.S. 400, 85 S.Ct. 1065 (1965); **McCarthy v. United States**, 89 S.Ct. 1166 (1968).

The trial record in **Boykin**, supra, as in the case at bar, did not reveal that the judge explained the consequences of a plea of guilty and the loss of the above rights. It has been pointed out in **Johnson v. Zerbst**, 304 U.S. 458, 58 S.Ct. 1019, (1938), that

> "Courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights."

Therefore, the Court cannot presume a waiver of important federal rights from a silent record. Consequently, the Supreme Court in **Boykin**, supra held that:

> "It was error plain on the face of the record, for the trial judge to accept Petitioner's guilty plea without an affirmative showing that it was intelligent and voluntary."

This is precisely the situation in the case sub judice. The transcript of the trial taken when the plea was entered affirmatively reflects that the Defendants were not advised of the consequences of their plea of guilty. The question of an effective waiver of a federal constitutional right in a proceeding is governed by federal standards. **Douglas v. Alabama**, 380 U.S. 415, 85 S.Ct. 1074 (1965). Consequently, if a Defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void **Johnson**, supra.

Finally, no case has ever stated that the necessary instructions by the trial judge must only be given if the plea of guilty is entered before the trial begins. If the sacred rights of the Constitution of the United States are to be preserved, there should be no difference permitted in the quality or quantity of the instructions given even if the trial is in progress when the plea of guilty is entered.

The defense submits that the Defendants did not fully understand the consequences of their plea of guilty. They would not have entered them if the trial judge had explained to them that to enter such a plea results in a waiver of every important and fundamental right guaranteed to the people by the Constitution.

Since, as shown, a guilty plea waives many constitutional rights, and such waiver cannot be presumed from a silent record, it is submitted that based upon the record in the case at bar, the guilty pleas should be set aside and a new trial granted.

In order to gain this result this Court should grant a writ of certiorari and quash the opinion below.

## CONCLUSION

For the above reasons it is submitted that the Writ of Certiorari in this case should be issued and the Court should consider this case on the merits.

Respectfully submitted,

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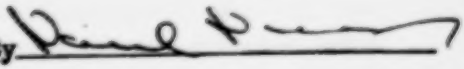
By 

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## AFFIDAVIT OF SERVICE

STATE OF FLORIDA :

SS

COUNTY OF DADE :

I, PAUL POLLACK, first being duly sworn according to law, do depose and say:

I HEREBY CERTIFY that a copy of the Petition for Writ of Certiorari to the Supreme Court of the United States was served upon the office of the HONORABLE

ROBERT L. SHEVIN, Attorney General, 1350 N.W. 12th Avenue, Miami, Florida, this 18 day of July, 1972, by mailing a copy of same to him by United States Mail, First Class postage prepaid, pursuant to Rule 33 of this Court.

PAUL POLLACK
*Counsel for Petitioners*

SWORN TO AND SUBSCRIBED TO before me at Miami, Dade County, Florida, this 18 day of July, 1972.

NOTARY PUBLIC, State of Florida at Large

My Commission Expires:

• • •

NOTARY PUBLIC, STATE of FLORIDA at LA
MY COMMISSION EXPIRES AUG. 27, 1